IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal from Order No. 143 of 2005

Date of decision: 28th October, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 143 of 2005

1. Sri Rais Miyan S/o Sri Naushey Miyan.
2. Smt. Roshan Ara W/o Sri Rais Miyan.
3. Km. Rashia D/o Rais Miyan.
4. Km. Chand D/o Rais Miyan.
   Appellants Nos. 3 & 4 are minors
   Through their legal Guardian and father
   Sri Rais Miyan.
   All R/o Mohammadi Chowk, Indra Nagar,
   Haldwani, District Nainital. …… Appellants

Versus

1. Sri Sanjay Bohra S/o Sri B.S. Bohra,
   R/o Mahaveer Gunj, Haldwani,
   District Nainital.
2. The Oriental Insurance Company Ltd.,
   through Divisional Manager,
   Divisional Office, Nainital Road,
   Haldwani, District Nainital. …….. Respondents

Mr. Lalit Sharma, Advocate for the appellants.
None for respondent No. 1.
Mr. D.K. Sharma, Advocate for respondent No.2.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C. J. (Oral)

This is claimants' appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / District Judge, Nainital vide Award dated 01.01.2005 passed in Motor Accident Claim Petition No. 214 of 2003.

2. The claimants, who are unfortunate parents and sisters of deceased Mohammad Asif, claimed compensation of Rs. 10,00,000/- for his death in the motor accident on 04.11.2003 when he was dashed by the offending vehicle Canter bearing registration No. U04/2189 resulting in serious injuries to Mohammad Asif, who succumbed to

those injuries the same day. The claimants pleaded that deceased Mohammad Asif was aged about 22 years and used to earn Rs. 4,500/- per month as Mason.

3. The owner and the insurer of the offending vehicle Canter contested the claim and denied their liability to pay compensation to the claimants. The owner of the offending vehicle Canter took the plea that the deceased himself was negligent and responsible for the accident, whereas the insurer pleaded that the vehicle (Canter) was being plied in breach of the policy conditions.

4. The claimants examined PW1 Rais Miyan in support of their claim, whereas the owner and insurer of the offending vehicle Canter did not examine any witness.

5. The Tribunal, on a close scrutiny of the evidence led by the parties, held that deceased Mohammad Asif died on account of the injuries sustained by him in the motor accident on 04.11.2003; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Canter; and the insurer of the offending vehicle Canter was liable to pay compensation to the claimants.

6. The Tribunal, on a close scrutiny of the evidence led by the claimants about the income of the deceased, assessed his income at Rs. 2,000/- per month and Rs. 24,000/- per annum. After deducting 1/3rd of the said amount as the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 16,000/- per annum. By multiplying the annual dependency of Rs. 16,000/- with the multiplier of '11', the compensation was worked out to Rs. 1,76,000/-. The Tribunal, therefore, awarded a sum of Rs. 1,76,000/- as compensation to the claimants for the death of Mohammad Asif in the motor accident. The Tribunal, further, directed the insurer of the offending vehicle Canter to pay interest at the rate of 6% per annum in the event

of its failure to pay the amount of compensation within a period of two months from the date of the Award.

7. Mr. Lalit Sharma, the learned counsel for the appellants submitted that the Tribunal has erred in not accepting the claimants' evidence about the income of the deceased and in assessing his income at Rs. 2,000/- per month and Rs. 24,000/- per annum only; in selecting the lower multiplier of '11'; and in not awarding any interest on the amount of compensation and in directing only a conditional payment of interest in the event of insurer's failure to pay the amount of compensation within a period of two months from the date of the Award.

8. Mr. D.K. Sharma, the learned counsel for respondent No.2 Oriental Insurance Company Ltd., on the other hand, supported the Award and submitted that the Tribunal has been quite liberal in awarding substantial amount of Rs. 1,76,000/- as compensation to the claimants though the claimants could not establish the income of the deceased.

9. The findings recorded by the Tribunal that deceased Mohammad Asif died on account of the injuries sustained by him in the motor accident on 04.11.2003; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Canter; and the insurer of the offending vehicle Canter was liable to pay compensation to the claimants have, now, attained finality as the respondents have not filed any appeal against the Award.

10. Though the claimants pleaded that deceased Mohammad Asif used to earn Rs. 150/- per day and Rs. 4,500/- per month as Mason, no reliable evidence was led before the Tribunal to establish the said income of the deceased. The claimants could have examined the

contractor with whom the deceased was said to be working as a Mason. The only evidence led by the claimants about the income of the deceased is of PW1 Rais Miyan, the father of the deceased. In this state of evidence, we do not find any fault in the approach of the Tribunal in discarding the claimants' evidence about the income of the deceased. Nevertheless, the assessment of the income of the deceased by the Tribunal at Rs. 2,000/- per month and Rs. 24,000/- per annum deserves reconsideration, as the same is on the lower side. The deceased being aged about 20-22 years, even by working as a labourer, could have easily earned Rs. 80-100/- per day. The Tribunal has fallen into error in assessing the income of the deceased on the assumption that he would be getting work only for 20 days in a month. In our opinion, the income of the deceased ought to have been assessed at Rs. 2,500/- per month and Rs. 30,000/- per annum. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 2,500/- per month and Rs. 30,000/- per annum.

11. By deducting 1/3rd of Rs.30,000/- as the personal expenses of the deceased, the claimants' dependency is assessed at Rs.20,000/- per annum.

12. The Apex Court, in the case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and anothe**r reported in **(2003)8 SCC 731,** has held that in those cases where the claimants are parents of the deceased, the multiplier should never exceed '10'. As, in the present case also, the claimants are the parents of the deceased, the appropriate multiplier, in view of the above dictum would be '10' only.

13. By multiplying the annual dependency of Rs. 20,000/- with the multiplier of '10', the compensation works out to Rs. 2,00,000/-. The claimants are further entitled to receive Rs. 5,000/- towards Funeral

Expenses and Rs. 5,000/- towards Loss of Estate. Thus, the claimants become entitled to receive a total sum of Rs. 2,10,000/- as compensation for the death of Mohammad Asif in the motor accident.

14. The Tribunal has fallen into error in not awarding any interest on the amount of compensation. By directing only a conditional payment of interest in the event of insurer's failure to pay the amount of compensation to the claimants within a period of two months from the date of the Award, the Tribunal has deprived the claimants of the amount of interest, which was otherwise payable to them. With a view to avoid any possible delay in the computation of the amount of interest by the Claims Tribunal, we deem it proper to quantify the same ourselves. The accident in the present case took place on 04.11.2003. The claim petition was filed on 05.12.2003. The impugned Award was passed by the Tribunal on 01.01.2005 and the amount of compensation awarded by the Tribunal must have been deposited by the Insurance Company on or before 01.03.2005. Considering the above-mentioned relevant factors, we quantify the amount of interest at Rs. 20,000/-(Rupees Twenty Thousand only).

15. Thus, the claimants are entitled to receive a total sum of Rs. 2,30,000/- (Rupees Two Lakhs and Thirty Thousand only) [Rs. 2,10,000/- towards Compensation + Rs. 20,000/- towards Interest).

16. For the foregoing reasons, the appeal filed by the appellants for enhancement of the compensation is allowed in part. The compensation of Rs. 1,76,000/- (Rupees One Lakh and Seventy Six Thousand only) awarded by the Tribunal is enhanced to Rs. 2,10,000/- (Rupees Two Lakhs and Ten Thousand only) with further quantified interest of Rs. 20,000/- (Rupees Twenty Thousand only). Second respondent Oriental Insurance Company Ltd. is directed to deposit the enhanced amount of compensation and Rs. 20,000/- quantified as

Interest within a period of two months from today before the concerning Claims Tribunal.

17. No order as to costs.

(Rajesh Tandon, J.) 28.10.2006

(Rajeev Gupta, C.J.) 28.10.2006

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